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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,599	02/28/2002	Brent R. Constantz	CORA-014	7922
24353	7590	09/28/2005	EXAMINER	
BOZICEVIC, FIELD & FRANCIS LLP 1900 UNIVERSITY AVENUE SUITE 200 EAST PALO ALTO, CA 94303			AHMED, AAMER S	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/087,599

Applicant(s)

CONSTANTZ ET AL.

Examiner

Aamer S. Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 24 and 35-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 25-34 and 44-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Response to Amendment*

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant's amendments to claim 8 and 16 to provide proper antecedent basis has been entered.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-23, 25-29, 31-33 rejected under 35 U.S.C. 102(b) as being anticipated by Sahota et al (US 5,537,608) or Fuller et al (US 6,139,571). Sahota et al (Figure 1) and Fuller et al (Figure 1) both disclose a device for localized contact of a fluid to a target site (Fuller et al, Col. 3 Line 50- Col. 4, line 42) comprising a fluid delivery element, a porous region, and an aspiration element (Sahota et al Col. 1 line 47-Col. 2 line 38).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 21, 29-31 and 33-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Briskin (US 6,228,046). Briskin discloses a device (Figure 2A) comprising a fluid delivery

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element, an aspiration element, and an external energy application element application element that is of sonic energy (Col. 3, Line 115-Col. 5. Line 15).

Claims 44-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Constantz et al (6,488,671). Constantz et al teaches a system and a kit (Figures 1-4) for use in delivering a fluid to a target site (Col. 2 Lines 8-22)

***Claim Rejections - 35 USC § 103***

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sahota et al (US 5,370,608) or Fuller et al (US 6,139,571) in view of Chia et al (US 5,913,856). Sahota et al or Fuller et al describe the device as described above in reference to claim 1. Neither Sahota et al or Fuller et al explicitly disclose that the porous region has a porosity ranging from about 20 to 1,000 microns. Chia et al (US 5,913,856) discloses a similar device comprising a porous region having porosity within about 20 to 1,000 microns (Chia et al Col. 5 line 33). It would have been obvious to one having ordinary skill at the time of invention by applicant to modify the device as described by either Sahota et al or Fuller et al by incorporating a porous region of the type taught by Chia et al in order to achieve appropriate fluid flow ranges (Chia Col. 5 line 40).

***Response to Arguments***

Applicant's arguments filed Jul7 18, 2005 have been fully considered but they are not persuasive. Applicant states that none of the prior art discloses a porous region at the end through which fluid must flow to the contact site. Examiner respectfully disagrees. Examiner finds that the Merriam-Webster online dictionary has several definitions of the word "porous". Among the several definitions, Examiner finds one to be "permeable to fluids". Accordingly, Examiner

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maintains that the devices of all of the prior art do indeed disclose a porous region at the end of through which fluid must flow to the contact site.

Applicant also states that Claim 54 was not included in any rejection in the last office action. However Applicant's arguments with respect to claim 54 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5011469 A	Buckberg; Gerald D. et al.
US 5573504 A	Dorsey, III; James H.
US 5586977 A	Dorsey, III; James H.
US 5803510 A	Dorsey, III; James H.
US 5800407 A	Eldor; Joseph
US 6056725 A	Elsberry; Dennis D.
US 6093180 A	Elsberry; Dennis D.
US 6139571 A	Fuller; Terry A. et al.
US 4784638 A	Ghajar; Jamshid B. G. et al.
US 5919171 A	Kira; Kazuaki et al.
US 6132405 A	Nilsson; Christer et al.
US 6024739 A	Ponzi; Dean M. et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aamer S. Ahmed whose telephone number is 571-272-5965. The examiner can normally be reached on Monday thru Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



A.A.



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